MINUTES OF THE MEETING
OF THE
LEGISLATIVE COMMITTEE ON HEALTH CARE
(*Nevada Revised Statutes* 439B.200 through 439B.240)
January 26, 2000
Las Vegas, Nevada

The third meeting of the Nevada Legislature=s Committee on Health Care for the 1999-2000 interim was held on Wednesday, January 26, 2000, at 10:00 a.m., in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. This meeting was videoconferenced to Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Pages 2 through 5 contain the AMeeting Notice and Agenda@ for this meeting.

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblywoman Ellen M. Koivisto, Chairman
Senator Raymond D. Rawson, Vice Chairman
Senator Bernice Mathews
Senator Maurice E. Washington
Assemblywoman Merle A. Berman

COMMITTEE MEMBER PRESENT IN CARSON CITY:

Assemblywoman Vivian L. Freeman

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Marla McDade Williams, Senior Research Analyst
Risa B. Lang, Principal Deputy Legislative Counsel
Leslie Hamner, Senior Deputy Legislative Counsel
Debby Richards, Manager of Office Services

MEETING NOTICE AND AGENDA

Name of Organization:	Legislative Committee on Health Care (*Nevada Revised Statutes* 439B.200)
Date and Time of Meeting:	Wednesday, January 26, 2000 9:30 a.m.
Place of Meeting:	Grant Sawyer State Office Building Room 4401 555 East Washington Avenue Las Vegas, Nevada

Note: Some members of the committee may be attending the meeting, and other persons may observe the meeting and provide testimony, through a simultaneous video conference conducted at the following location:

Legislative Building
Room 3138
401 South Carson Street
Carson City, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative website is http://www.leg.state.nv.us. For audio broadcasts, click on the link AListen to Meetings Live on the Internet.@

A G E N D A

I. Opening Remarks by the Chairman

Assemblywoman Ellen M. Koivisto

*II. Approval of Minutes of the Meetings Held on October 5, 1999, in Las Vegas, and on December 14, 1999, in Carson City, Nevada

*III. Presentation Regarding the School of Medicine by the Dean of the University of Nevada, Reno, School of Medicine

Dr. Robert Miller, Dean

*IV. Presentation and Discussion of Nurse Staffing Levels in Nevada

Theresa Morrow, Chairman, Health Care Oversight Committee, Nevada Service Employees Union

Yolanda Crobarger, R.N., Washoe Medical Center, and Member, Operating Engineers, Local No. 3

Bill M. Welch, President and Chief Executive Officer, Nevada Association of Hospitals and Health Systems

*V. Report Concerning Amendments to Chapter 445A of the *Nevada Administrative Code* for Fluoridation of Nevada=s Public Water Systems

Yvonne Sylva, Administrator, Health Division, Department of Human Resources (DHR)

*VI. Report Describing a Cost/Benefit Analysis of the Use of the Varicella (Chicken Pox) Vaccine in Nevada

Yvonne Sylva, Administrator, Health Division, DHR

*VII. Discussion of the Use of Restraints and Interventions Pursuant to *Nevada Revised Statutes* (NRS) 433.545 to 433.551, inclusive; and the Use of Aversive Intervention or Forms of Restraint on Patients with Disabilities Pursuant to NRS 449.765 to 449.786, inclusive

Stephen A. Shaw, Administrator, Division of Child and Family Services (DCFS), DHR

David Luke, Ph.D., Associate Administrator for Developmental Services, Division of Mental Health and Developmental Services (DMHDS), DHR

Cynthia Pyzel, Senior Deputy Attorney General, Office of the Attorney General

Yvonne Sylva, Administrator, Health Division, DHR

*VIII. Update Concerning Devereux Cleo Wallace Centers and Related Actions Concerning the Moapa Band of Paiutes; Discussion of the Physical Restraint Practices in these Facilities; and Discussion of Case No. 97 D 2517, *United States of America ex rel. Ross Wright v. Cleo Wallace Centers, Cleo Wallace Foundation, and James M. Cole, in his official capacity as Chief Executive Officer and President of Cleo Wallace Centers*

Janice A. Wright, Administrator, Division of Health Care Financing and Policy (DHCFP), DHR

Stephen A. Shaw, Administrator, DCFS

*IX. Report Concerning Development of the Program of Subsidies for the Provision of Pharmaceutical Services to

Senior Citizens Pursuant to NRS 439.635 to 439.690, inclusive

Janice A. Wright, Administrator, DHCFP

*X. Report Concerning Proposed Medicaid Regulations Affecting Certain Persons Who Are Disabled, as Such Regulations Were Considered by the DHCFP, at the Regulatory Hearing of December 20, 1999

Janice A. Wright, Administrator, DHCFP

*XI. Discussion of the Coordination of Personal Care Assistant (PCA) Services in Nevada and A Report Concerning the Status of the Medicaid Waiver to Enhance Services for Certain Persons Who Are Physically Disabled

Janice A. Wright, Administrator, DHCFP

*XII. Presentation and Discussion of the Implications and Implementation of *Olmstead v. L.C. ex rel. Zimring*, 119 S.Ct. 2176 (1999)

Leslie Hamner, Senior Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau

Carlos Brandenburg, Ph.D., Administrator, DMHDS

Dave Luke, Ph.D., Associate Administrator for Developmental Services, DMHDS

Debbie Hosselkus, L.S.W., Deputy Administrator, DMHDS

*XIII. Presentation and Discussion Concerning Services for Children with Autism in Nevada

Florence LaRoy, Representative, Families for Effective Autism Treatment

Stephen A. Shaw, Administrator, DCFS

Carlos Brandenburg, Ph.D., Administrator, DMHDS

David Luke, Ph.D., Associate Administrator for Developmental Services, DMHDS

Debbie Hosselkus, L.S.W., Deputy Administrator, DMHDS

*XIV. Report Concerning Assembly Bill 386 (Chapter 516, *Statutes of Nevada 1999*) Requiring the DHR to Conduct a Study of the Methodology Used in Determining the Amount and Distribution of Payments Made to Certain Hospitals that Treat Medicaid, Indigent, or Other Low-income Patients

Janice A. Wright, Administrator, DHCFP

*XV. Review of Written Report Concerning Items Relating to Long-term Care in Nevada to be Studied Pursuant to Senate Concurrent Resolution No. 4 (File No. 143, *Statutes of Nevada 1999*)

*XVI. Discussion of Future Topics

XVII. Public Testimony

XVIII. Adjournment

*Denotes items on which the committee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street,

Carson City, Nevada 89701-4747, or call Debby Richards, at (775) 684-6825, as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Grant Sawyer State Office Building, 555 East Washington Avenue; and Clark County Office, 500 South Grand Central Parkway.

OPENING REMARKS BY THE CHAIRMAN

Chairman Ellen M. Koivisto opened the meeting and asked the secretary to call the roll. She then introduced the members of the subcommittee.

The Chairman explained that Exhibit A consists of a two-volume packet that was prepared by staff for this meeting. (Please see the AList of Exhibits@ for details).

APPROVAL OF MINUTES OF THE MEETING HELD ON OCTOBER 5, 1999, IN LAS VEGAS, AND ON DECEMBER 14, 1999, IN CARSON CITY, NEVADA

The Chairman called for approval of the minutes of the committee=s first and second meetings.

SENATOR WASHINGTON MOVED TO APPROVE THE MINUTES OF THE COMMITTEE=S MEETINGS ON OCTOBER 5, 1999, IN LAS VEGAS, AND DECEMBER 14, 1999, IN CARSON CITY, NEVADA. SENATOR RAWSON SECONDED THE MOTION WHICH PASSED UNANIMOUSLY. SENATOR MATHEWS ABSTAINED FROM THE VOTE.

PRESENTATION REGARDING THE SCHOOL OF MEDICINE BY THE DEAN OF THE UNIVERSITY OF NEVADA, RENO, SCHOOL OF MEDICINE

The Chairman noted that Dr. Robert Miller, Dean of the University of Nevada, Reno (UNR), School of Medicine could not attend this meeting.

PRESENTATION AND DISCUSSION OF NURSE STAFFING LEVELS IN NEVADA

Theresa Morrow

Theresa Morrow, Co-Chairman, Health Care Oversight Committee, Nevada Service Employees Union (NSEU), addressed the committee on issues relating to nurse staffing (Exhibit B).

Ms. Morrow began her presentation by indicating that her group will again seek to introduce a bill to the next session of the Nevada Legislature to require the establishment of nurse staffing ratios in the state. She then explained that her group approached the State Board of Nursing for assistance with this issue, and she alleged that licensed nurses, nurse managers, and administrators have been receiving financial incentives to minimize staffing in facilities in which they work.

Also, she stated that she asked the board to consider collecting data to review staffing as it relates to patient safety. According to Ms. Morrow, despite their pleadings before the board, the board has indicated that it will not act on the recommendations of nurses that are represented by the NSEU.

Continuing, Ms. Morrow said that the State Board of Health and the Bureau of Licensure and Certification (BLC),

Health Division, Nevada=s Department of Human Resources (DHR), have been responsive to the input of the Health Care Oversight Committee. With their input, the language that governs hospital staffing and the revised hospital regulations has been improved. However, Ms. Morrow noted that Nevada=s regulations, which are based on acuity staffing levels and which have been used in California for many years, are difficult to enforce. She stated that the acuity model is flexible when one considers the dynamic flow of the patient population in a hospital or medical facility, however the health care facilities in the State of California would not comply with the regulations. She noted that nurses in California recently succeeded in getting a staffing ratio law passed. (See Exhibit A, page IV-29.)

Ms. Morrow reported that the BLC does not currently perform routine inspections in facilities that are accredited by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO). She indicated that all acute care hospitals in Nevada are JCAHO accredited, and the JCAHO is responsible for accrediting about 80 percent of the hospitals in the United States. She referenced a recent report from the U.S. Office of the Attorney General that identified Aserious deficiencies@ with this Aindustry funded@ accreditation organization.

Ms. Morrow directed the committee=s attention to her handout (Exhibit B, Number 2), and she noted a sample of the AStaffing Ratio Plans@ from four separate acute care hospitals, which is included in the handout. Ms. Morrow said that she also has three months of staffing management reports from one particular hospital unit, which illustrates how 44 percent of the time this unit fails to meet its own standards for patient safety. (See Exhibit B, Number 3.)

She explained that when the BLC responds to a staffing complaint, bureau staff require that a serious patient occurrence be linked to the specific complaint. When in court, the bureau must be able to cite individual incidents to prove that staffing practices endanger patients.

Ms. Morrow expressed that in the interest of public safety, health care facilities should staff according to the ongoing needs of patients, and she alleged that they are not currently staffing their facilities in this manner. She stated that the BLC should accept the enforcement responsibility for this problem.

Ms. Morrow indicated that she recently reviewed data compiled by the Division of Health Care Financing and Policy (DHCFP), DHR, concerning Nevada medical providers. She compared two separate quarters of data for one acute care facility. Her research concluded that there was an increase in the number of inpatient days and a decrease in the number of full-time employees (FTEs) for the same period. By the fourth quarter, the number of FTEs for registered nurses (RNs), licensed practical nurses, aides, and orderlies had been reduced by 75 people. The total number of RNs was reduced by 48. She questioned whether this staffing is more efficient and cost-effective for the patient or less safe.

Continuing, Ms. Morrow stated in her opinion, as a front-line care giver, shop steward, and union organizer, the overall morale of health care workers in Nevada is poor.

Other topics discussed by Ms. Morrow included:

$ Union membership in Nevada health care facilities;

$ Fraud in the health care system and the Amedical loss ratio,@ which is the amount spent on patient care;

$ Quality problems in American medicine, which include errors and poor patient outcomes;

$ Differences in defining Anursing shortages@ and Ashort-staffed units@;

$ Improving internship programs and training for nurses; and

$ Providing scholarships for persons interested in pursuing health care careers.

In conclusion, Ms. Morrow stated it is her opinion that we, as a society, are going to have to decide what the proper sequence of priorities are for a health care system, whether society wants a system that is safe and accessible for all citizens, or whether society wants health care to be guided by financial markets.

In response to Assemblywoman Freeman=s question, Ms. Morrow stated that she is providing a report from the Institute of Medicine, National Academy of Sciences. (Exhibit B, Number 4.) The report reflects a review of medical errors throughout the country. She stressed that a system for external reporting in Nevada does not currently exist.

Discussion ensued regarding the state agency that should conduct external oversight and the funding necessary for the function. It was Ms. Morrow=s opinion that the BLC would be the appropriate agency.

With respect to internships for nursing students, Ms. Morrow responded to Assemblywoman Freeman that the Health Care Oversight Committee is currently reviewing this issue.

Responding to questions by Mrs. Freeman, Ms. Morrow stated:

$ Most acute care hospitals have 12-hour shifts while 10-hour shifts are common in out-patient facilities. She expressed that 12-hour shifts are more efficient in these environments.

$ Mistakes that may be attributed to fatigued health care employees who work 12-hour shifts are a concern.

$ Newly graduated health care workers do not always receive adequate training and experience yet are expected to manage the same caseloads as their more senior colleagues.

Assemblywoman Freeman and Ms. Morrow briefly discussed the possibility of acquiring funding for health-related courses of study through Governor Kenny C. Guinn=s Millennium Scholarship Program. Senator Mathews then stated that the Legislative Committee on Education (NRS 218.5352) addressed this topic at its January 25, 2000, meeting. She suggested that Ms. Morrow meet with the faculty of the UNR School of Nursing to discuss the topic of nursing assignments and related salaries. Additionally, Senator Mathews emphasized that new nursing graduates working in hospitals should have a mentor with them at all times during their initial training period.

In response to a question by Assemblywoman Berman, Ms. Morrow explained that nurse staffing levels in a hospital should be organized by the number of patients rather than their needs. She concluded that patient exploitation for financial gain is unethical.

Yolanda Crobarger

Yolanda Crobarger, R.N., Cardiac Intensive Care Nurse, Washoe Medical Center (WMC) and Member, Operating Engineers Local No. 3, representing the Coalition for Quality Care appeared before the committee. Referencing Ms. Morrow=s testimony, she stated that her staff at WMC also deal with under staffing issues. The nurses there made a decision to unionize to have a voice in the quality of care provided to patients. As a result, the Coalition for Quality Care was developed to help bring health care issues, such as hospital staffing problems, to the attention of the community (Exhibit D).

Reiterating the Astaffing@ problem addressed by Ms. Morrow, Ms. Crobarger also noted that patient acuity has greatly increased yet staffing levels have decreased. She stated that Dorothy Riley, President, Nevada Nurses Association, recently made the observation that hospitals have become Agiant intensive care units.@ Patients are being sent home sicker than they were prior to their hospitalization and without the education required to help them deal with their illnesses. Paraphrasing the remarks of Ms. Riley, Ms. Crobarger stated that these practices may lead to re-hospitalization and higher costs for both the patient and hospital. Ms. Crobarger noted that hospital personnel do not have time to properly educate this Arevolving door of patients.@

Continuing, she noted that literature presented by Ms. Morrow reflected direct correlations in increased hospital acquired infections, increased use of restraints, both chemical and physical, and an increase in medication errors. She alleged that those correlations are a direct result of an insufficient number of nurses to properly staff hospitals. In addition, she asserted that nurses are leaving hospitals due to increased patient loads, increased responsibility, and Aunsafe working conditions,@ which all combine to lead to a sense of Ahopelessness.@ Ms. Crobarger stated that enrollment in nursing schools is down nationwide, and it is predicted that new nursing shortages will not be noted for at least another five years.

Commenting further, she reported that the State Board of Health and the BLC have been supportive with the new acuity language. However, her concerns relate to monitoring and enforcing these regulations.

She questioned whether the current matrix system, which she alleges is ignored by both hospital managers and administrators, will change. She made the following additional comments:

$ It is common practice to Afloat@ nurses from one floor that is short staffed to another floor that is short staffed, which exacerbates the problem of nurses who feel overwhelmed by their workload on each floor.

$ The American Nurses Association reported that shifting the nursing paradigm away from an industrial model to a professional model would spell an end to the Anurse-is-a-nurse@ mentality.

$ To provide quality patient care, a hospital must focus on the complexity of unit activities and the level of nurse competency.

Ms. Crobarger asked that the Committee:

$ Request that hospitals provide Atrue care@ to each and every patient and his family;

$ Request that hospitals provide support to patients who are newly diagnosed with a disease and assist patients who feel Aoverwhelmed, helpless or hopeless@; and

$ Request that hospitals help provide support to the family that is dealing with end-of-life decisions.

Concluding, she added the committee=s help is needed to Asalvage a profession@ that gives so much to people during their greatest time of need. She opined that if the problems that nurses deal with on a day-to-day basis are not dealt with today, there will be no nurses for tomorrow.

Assemblywoman Freeman asked Ms. Crobarger about an earlier statement concerning patients who return home without instructions on how to care for their medical problems and whether the instructions are administered by social workers within a facility. Ms. Crobarger responded that it is the nurse=s responsibility to give instructions. She added that nurses also have the responsibility for patient education during admission to a hospital.

Assemblywoman Freeman added that apparently the nursing staff and social services are not teaching in the area of educating a patient in home care. Ms. Crobarger indicated that there is some coordination between case workers and nursing staff, but case coordinators generally disassociate themselves from the patient, and the education is left to the nurses while the patient remains in the hospital.

Jim Wadhams

Jim Wadhams, representing the Nevada Association of Hospitals and Health Systems (NAHHS), noted that he would speak for Bill M. Welch, President and Chief Executive Officer, NAHHS. He stated that the association has responded to Legislative Counsel Bureau (LCB) staff requests and documentation has been provided. (See Exhibit C, page 13.)

Referring to previous testimony, Mr. Wadhams agreed that there are staff shortages in all areas of health care, however the most severe is within the nursing profession. He referenced an example that was illustrated in the APackham Study,@ which was prepared by the University and Community College System of Nevada in accordance with Senate Bill 385 (Chapter 427, *Statutes of Nevada 1997*). This report shows that Nevada=s educational system is only producing 312 RNs per year while the demand for new RNs has increased to 760 annually. Continuing, Mr. Wadhams concurred with Senator Mathews in regard to finding ways to motivate people to become nurses and pursue this very important profession.

Mr. Wadhams noted that a survey of 13 members of the NAHHS concluded that there are currently 240 unfilled nursing positions as of January 25, 2000, and he stated that it is a severe problem. A shortage of staff causes hospitals to go on Adivert status@ wherein no new patients will be admitted to a hospital during this time. Mr. Wadhams again referenced the APackham Study@ and discussed the state=s overall growth and the number of nurses that are needed to keep pace with that growth.

Continuing, Mr. Wadhams noted that state law is clear that very specific standards are required for staffing in hospitals. He also noted that the Interim Finance Committee has authorized additional personnel for the BLC to investigate and enforce its regulatory policies, and the NAHHS is supportive of enforcement of those regulations.

Reiterating Ms. Morrow=s previous statement, Mr. Wadhams agreed that acuity is not predictable. As a result, it is his opinion that the BLC has created an enforcement mechanism that will adequately investigate policies for patient

care. He further stated that an arbitrary standard of fixed ratios of nurses will not reflect the dynamic environment of a hospital. He summarized that enforcement of the acuity regulations is the key to providing ethical patient care.

Concluding his remarks, Mr. Wadhams noted that the NAHHS is willing to help encourage the public in pursuing employment within the nursing profession.

Responding to Chairman Koivisto, Mr. Wadhams stated that the NAHHS does not currently recruit any staff or individual members from other areas. However, classified ads are listed in newspapers of general circulation in this area. Classified ads are also placed on the Internet.

Assemblywoman Berman commented on the information distributed in Exhibit C (Tab XI, page 17) regarding the number of RNs per 100,000 population in Nevada by county of residence. She requested clarification of the provided documentation from Mr. Wadhams.

Responding for Mr. Wadhams, Mr. Welch explained to Assemblywoman Berman that this statistic was produced as a result of the APackham Study.@ Their statistical analysis was not confirmed by his organization.

Assemblywoman Freeman commented that the nursing shortage is nationwide and hospitals are trying to import nurses from other states, which have their own shortages of nurses. In addition, she commented that the issues the committee is addressing could be solved if there were more qualified

personnel in all hospital and nursing facilities. Mrs. Freeman also expressed concern about the effect managed care has had on medical schools.

Responding to a question by Mrs. Freeman, Mr. Wadhams noted that he is not aware of any current effort by Congress to allocate money to the nation=s nursing schools. However, he advised that the hospital association plans to address this issue at the national level through local organizations. A committee is reconsidering specific issues derived from the 1980s regarding special funding for nursing programs.

Assemblywoman Freeman commented that she would like to go beyond the 1980s special funding program and encouraged the hospital association to participate in this program.

Senator Mathews reiterated that a special funding program in 1980 was used to increase the number of nursing students. She noted that it is essential that there be a continuous education and recruitment program for nursing schools. The hospitals and schools of nursing will have to determine how to administer placement of nurses for the practice of patient care. She reiterated that there are too many patients for the amount of nurses currently on staff. However, promotion for nursing education and recruitment must be conducted on a continual basis to resolve the problems that Ms. Morrow has discussed.

In addition to the nurse staffing problems that were discussed, Chairman Koivisto pointed out that the University of Nevada, Las Vegas, has difficulty providing teachers for its nursing program.

This situation adds to the nursing shortage problem. She suggested that all parties who are interested in solving the nursing shortage should meet and attempt to develop a solution, and she said that a more cooperative effort should be applied by all members of the health care profession.

Dr. Bernard H. Feldman

Bernard H. Feldman, M.D., M.P.H., who serves as Chairman of the State Board of Health as well as Professor and Chairman/Residency Director of the Department of Pediatrics at the University of Nevada School of Medicine in Las Vegas, then appeared before the committee. He discussed the actions of the State Board of Health relating to nurse staffing levels in Nevada and addressed the following items:

$ The public workshops that were held prior to the board=s adoption of relevant regulations in Chapter 449, AMedical and Other Related Facilities,@ of the *Nevada Administrative Code* (NAC);

$ Deliberations of the State Board of Health concerning proposed amendments to Chapter 449 of the NAC; and

$ The contents of the permanent regulations adopted by the State Board of Health.

He summarized that the board unanimously decided that nurse staffing in ambulatory surgical centers, hospitals, and skilled nursing facilities should be decided by RNs based on a patient=s needs

and acuity. Mandated nurse staffing ratios were not implemented. (See Exhibit E for details of Dr. Feldman=s presentation. In addition, Exhibit F and G contain minutes and excerpts of minutes from meetings of the State Board of Health regarding nurse staffing ratios.)

Senator Washington and Dr. Feldman briefly discussed the effect computer technology may have on nurse staffing ratios in hospitals. Dr. Feldman explained that with proper education and appropriate usage, such methods eventually may reduce the need for certain personnel in health care facilities. However, he noted that physicians and nurses are not being trained to use computer programs to their full potential.

According to Senator Mathews, since 1986, computer technology has been part of the nursing curriculum in the state. She noted that computers will not reduce staffing requirements nor replace quality patient care in health care facilities. Senator Mathews emphasized that medical facilities must employ well-trained, qualified nurses to properly administer safe and ethical patient care.

Dr. Feldman expressed his support for the establishment of a Ahealth sciences university@ in the state to provide coordinated training for different health care occupations. He also mentioned the importance of making health care professions appealing to well-qualified individuals.

Richard J. Panelli

Richard J. Panelli, Chief, BLC, commented that a fiscal note was done in response to A.B. 586, which was the measure that was debated during the 1999 Legislative Session regarding the nurse staffing ratio proposal. This bill was not adopted by the Legislature.

Mr. Panelli responded to Chairman Koivisto that the BLC has a complete set of regulations within Chapter 449 of the NAC dealing with sanctioning all facilities that the bureau licenses. In addition, he noted that certain sanctions are established by statute.

In response to Assemblywoman Koivisto, Mr. Panelli noted that the BLC has formal policies and procedures regarding complaint investigations and the reporting of complaints. The bureau=s policy specifically states that all of the complainants are kept anonymous for the purpose of confidentiality. Mr. Panelli commented that he would provide the committee with a copy of the bureau=s policy and procedures manual in this regard.

REPORT CONCERNING AMENDMENTS TO CHAPTER 445A OF THE *NEVADA ADMINISTRATIVE CODE* FOR FLUORIDATION OF NEVADA=S PUBLIC WATER SYSTEMS

Yvonne Sylva

Yvonne Sylva, Administrator, Health Division, DHR, presented testimony in regard to amendments made to Chapter 445A, AWaters Controls,@ of the NAC, concerning fluoridation of Nevada=s public water systems (Exhibit A, Tab V).

She stated that the1999 Legislature debated the merits of fluoridating community water systems within the state and ultimately passed two bills, which were subsequently signed by Governor Guinn: Assembly Bill 284 (Chapter 262, *Statutes of Nevada 1999*); and Assembly Bill 689 (Chapter 588, *Statutes of Nevada 1999*). These measures require fluoridation of water in counties with populations greater than 400,000. The statutes in response to these bills are codified in NRS 445A.020 to NRS 445A.055, AConcentration of Fluoride in Water.@

Ms. Sylva noted that the law specifies that the State Board of Health shall adopt regulations requiring the following:

$ Fluoridation of all water delivered for human consumption in counties having populations of 400,000 or more and served by a public water system that serves a population of 100,000 or more.

$ A designation of maximum and minimum fluoride levels.

$ Requirements and procedures for maintaining proper concentrations of fluoride, including any necessary equipment.

$ Testing requirements.

$ Record keeping and reporting of requirements.

$ The criteria for exemption for a public water system to be excluded from the requirement to fluoridate.

Assembly Bill 689 further required a vote to be held on November 7, 2000, in areas affected by A.B. 284, with a question placed on the General Election Ballot at that time. Subsequent to the law, a AYes@ vote would cause the requirement for fluoridation to expire on January 1, 2001.

Concluding her remarks, Ms. Sylva noted that fluoridation of water systems, pursuant to the requirements outlined in A.B. 284, A.B. 689, and regulations adopted by the State Board of Health on December 10, 1999, must be implemented in those affected areas by March 1, 2000.

In response to Chairman Koivisto, Ms. Sylva stated that the water authority reported that there has been no fluoride added to the water in southern Nevada. Ms. Sylva noted that the Health Division merely adopted the regulations and advised the water authority on how to implement the fluoridation program.

Responding to questions by Senator Washington, Ms. Sylva stated:

$ If there were a violation of the regulations, the Health Division would fine the offender. She indicated that, at this time, the only entity to which the regulations apply is the Southern Nevada Water Authority.

$ The statute indicates that the water must be fluoridated, however the voters can vote to cease or not to cease water fluoridation.

$ The Las Vegas Valley Water District is responsible for supplying customers with billing statements and written documentation in regard to fluoridation costs. She also noted that she presumes the person responsible for preparing the fluoridation question for the ballot will conduct a thorough job of explanation to the public regarding the public=s total out-of-pocket expense for water fluoridation.

REPORT DESCRIBING A COST/BENEFIT ANALYSIS OF THE USE OF THE VARICELLA (CHICKEN POX) VACCINE IN NEVADA

Yvonne Sylva

Yvonne Sylva, Administrator, Health Division, DHR, provided information concerning use of the varicella (chicken pox) vaccine in Nevada (Exhibit H).

She began her testimony by stating that the committee requested information concerning the cost benefit of the varicella vaccine in Nevada. However, the Health Division does not have Nevada specific data on the cost benefit of this vaccine.

Ms. Sylva provided the following statistics:

$ The Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (DHHS), estimates that there are 4 million cases of chicken pox annually in the U.S.

$ More than 95 percent of Americans contract chicken pox by the time they are adults.

$ Each year there are approximately 5,000 to 9,000 hospitalizations and 100 deaths caused by chicken pox in the U.S.

$ Chicken pox has been classified as a Amajor childhood disease.@

$ The calculated annual cost for caring for children of normal health who have contracted chicken pox was approximately $918 million during 1993. These costs are estimates derived from visits to family physicians, and they include lost work time that parents may encounter when their children are afflicted with chicken pox.

$ The vaccine has been licensed since March of 1995.

$ The Advisory Committee for Immunization Practices and the American Academy of Pediatrics have recommended that all children be routinely vaccinated with one dose of the varicella vaccine between the ages of 12 months to 18 months.

$ The State of Nevada added the varicella vaccine to its immunization program in 1997 and currently provides more than 37,000 doses per year. At that time, only one death had been recorded as a result of this disease, and it was an adult who had contracted chicken pox from a child.

$ The cost of the varicella vaccine may cost more than some of the other vaccines, however there is only one dose administered, and the benefits of this vaccine should be acknowledged by the public.

Senator Mathews asked Ms. Sylva whether there were any deaths reported in the Washoe County area due to non-vaccination. In response, Ms. Sylva stated that in preparation of her testimony she was unable to locate any record of such a death of a child in Nevada.

DISCUSSION OF THE USE OF RESTRAINTS AND INTERVENTIONS PURSUANT TO *NEVADA REVISED STATUTES* (NRS) 433.545 TO 433.551, INCLUSIVE; AND THE USE OF AVERSIVE INTERVENTION OR FORMS OF RESTRAINT ON PATIENTS WITH DISABILITIES PURSUANT TO NRS 449.765 TO 449.786, INCLUSIVE

Stephen A. Shaw

Stephen A. Shaw, Administrator, Division of Child and Family Services (DCFS), DHR, addressed the committee concerning the issue of restraints and interventions of disabled patients pursuant to NRS 433.545 to 433.551, AUse of Restraints and Interventions.@ Mr. Shaw noted that the NRS that were enacted pursuant to Assembly Bill 280 (Chapter 597, *Statutes of Nevada 1999)* specifically exempt services operated by the DCFS and the Division of Mental Health and Developmental Services (DMHDS), DHR, because these agencies are JCAHO accredited or Health Care Financing Administration (HCFA), DHHS, certified. Continuing, Mr. Shaw requested that Les Gruner address the clinical aspects of the statutes.

Les Gruner

Les Gruner, Deputy Administrator, DCFS, commented that DCFS had substantial input concerning A.B. 280. Prior to implementation of this measure, and currently, none of the programs provided through DCFS ever used the aversive interventions mentioned within A.B. 280. In regard to the issues of physical, mechanical, and chemical restraint, DCFS has restrictive guidelines that are consistent with federal and state Medicaid regulations. The DCFS also provides a Atreatment information@ and a Atreatment plan contract@ agreement for parents and guardians of disabled children. This treatment plan requires a parent or guardian=s consent if it is necessary to use restraints in the treatment of their child.

Mr. Gruner made the following points:

$ The DCFS has a treatment menu that is specific to a behavior management program and is currently offered to each client in a DCFS program. This is a positive treatment involving extensive verbal intervention with children.

$ The only time restraining procedures are used would be during an emergency situation such as when a child has placed himself or someone else in danger.

$ Each DCFS facility has psychiatrists on staff and physicians= orders are used to execute restraint techniques. Information pertaining to restraints, treatment, or a child=s behavior is put into writing, provided to the parents, and becomes part of the patient=s file.

$ All DCFS staff are required to attend and participate in a specific training program on the use of restraints. This training program is not only for new DCFS staff but ongoing training for the existing staff, and consultation is provided in regard to these forms of technique on a continuing basis.

Discussion ensued concerning the standards of DCFS facilities and their accreditation and HCFA certification status. Concluding the DCFS presentation, discussion noted that DCFS facilities were not exempt from the requirements concerning the use of aversive intervention.

Carlos Brandenburg

Carlos Brandenburg, Ph.D., Administrator, DMHDS, DHR, addressed the committee regarding questions noted on a January 4, 2000, letter to Charlotte Crawford, Director, DHR, by Marla McDade Williams, Senior Research Analyst and Committee Policy Analyst, Research Division, LCB (Exhibit I).

In response to questions in the letter, Dr. Brandenburg commented that Ms. Crawford had a key part in working on A.B. 280. All of the policies and procedures of DMHDS have been reviewed by its Deputy Attorney General, Cynthia Pyzel. He asserted that Ms. Pyzel found the policies to be in compliance with various provisions of A.B. 280. He also asserted that prior to the passage of the bill, DMHDS was in full compliance with its requirements.

Dr. Brandenburg reiterated that the DMHDS has never used any form of aversive intervention within division facilities and that the division has an active training program that mandates certification of all direct-line staff. The division also requires an annual certification program within the Southern Nevada area.

Chairman Koivisto noted that Section 200, page 7, of the Desert Regional Center Policy Manual appears to allow level three behavioral management techniques, the use of sensory masking, and the application of aversive stimulation including concentrated lemon juice, ammonia capsules, water mist, and other unpleasant stimuli.

In response to the Chairman, Ms. Pyzel stated that the policy in question is outdated and those forms of intervention have not been used. She said that the policies have been reviewed, revised, and finalized, and they are in compliance with the updated HCFA regulations. She stated that a copy of the finalized policies will be submitted to the committee.

Chairman Koivisto commented on Sierra Regional Center=s Policy Manual. Documentation from this manual, dated September 9, 1997, stated that personnel are allowed to use aversive conditioning such as loud noise, noxious odors, sound, or shock in the treatment of patients.
She asked whether those forms of intervention have been repealed or eliminated. Ms. Pyzel responded that the same process of reviewing, revising, and finalizing new policies within all the agencies has been implemented.

Ms. Pyzel noted that one aspect of A.B. 280 that was not focused upon by some of the advocacy agencies is its application to the division=s Lakes Crossing Center for the Mentally Disordered Offender. This is a center for the mentally disordered offender that is neither HCFA certified nor JCAHO accredited. Essentially, the facility is not accredited by any national organization; therefore, personnel there are constrained by the terms and provisions of A.B. 280 in their handling of patients. She clarified that the use of aversive intervention does not occur at Lakes Crossing due to the nature of the patients served there. However, she concluded that the Office of the Attorney General is striving to make certain that the terms and provisions of A.B. 280 are achieved according to legislative intent.

In response to Senator Washington, Ms. Pyzel stated that the use of aversive intervention is not the issue in question. In her opinion, Lakes Crossing has been seriously restrained by the restriction on its use of physical and mechanical restraints. She stated that these types of restraints are necessary to protect the patient from harming himself, other patients, or staff.

Dr. Brandenburg commented that the administrative staff of Lakes Crossing were asked to document difficulties they have experienced in trying to adhere to the requirements of the law. Further, he noted that the patients at Lakes Crossing are mentally disordered offenders, 80 percent of whom are admitted due to violent felony offenses. Dr.

Brandenburg indicated that, as a result of his staff=s request, the division proposed amending the law to make it more compatible with the reality of dealing with patients at Lakes Crossing. Dr. Brandenburg further reiterated that the problem with the law as it pertains to Lakes Crossing is that the facility is neither HCFA certified nor JCAHO accredited and is consequently not exempt from the law.

Senator Washington then asked Dr. Brandenburg whether those facilities need to be HCFA certified or JCAHO accredited. In response, Dr. Brandenburg reported that the counties do not have JCAHO accreditation or HCFA certification; they have a correctional association by which they are certified, and this association has its own rules and regulations pertaining to custody facilities.

In response to Senator Washington=s question, Ms. Hamner stated that county facilities are classified as exempt pursuant to Section 13 of A.B. 280. Subsection 1 of section 13 of A.B. 280 states that county facilities are exempt if they are accredited by a nationally recognized accreditation association or agency.

Senator Washington recommended that DMHDS supply the committee with a copy of its proposed revisions to A.B. 280. Assemblywoman Koivisto concurred with his suggestion.

Ms. Williams directed the committee=s attention to a January 19, 2000, memorandum from Yvonne Sylva through Charlotte Crawford (Exhibit I), which indicates that the BLC has incorporated the provisions of this law into its hospital regulations at paragraph 3 of NAC 449.394, AHospitals: Psychiatric services.@ These regulations were adopted at the September 10, 1999, State Board of Health meeting.

Continuing, Ms. Williams reported that the memorandum states that the BLC=s survey process and complaint investigation process complies with this statutory change and with regulations adopted by the State Board of Health. She concluded that the BLC is not aware of any court action or convictions that have resulted from noncompliance with this legislation.

Susan Livak

Susan Livak, a resident of Reno, Nevada, interjected that her mother is in a late stage of Alzheimer=s Disease and resides in an assisted living residence. Ms. Livak expressed concern about the:

$ Possibility that state law may require an Alzheimer=s patient who receives a chemical restraint in an assisted living facility to be transferred to a hospital psychiatric unit or nursing home. Such a change would have a negative effect on the individual=s quality of life; and

$ Minimal training requirements exist for caregivers in assisted living facilities for patients with Alzheimer=s Disease.

Please see Exhibit J for details of Ms. Livak=s remarks.

In response to Ms. Livak=s testimony, Chairman Koivisto noted that the definition of chemical restraint excludes the administration of drugs on a regular basis as prescribed by a physician to treat the symptoms of mental, physical, emotional, or behavioral disorders, and to assist individuals in gaining self-control over their impulses. Therefore, she commented that the law does not apply to persons with Alzheimer=s who are under the care and direction of a physician. Responding to Chairman Koivisto=s comment, Ms. Livak stated that she interpreted Aregularly administered@ as something that is given on a regular basis. Therefore, she questioned if the statement regarding Aself-control@ will cover the Aas needed@ drug for the purpose of restraint.

Responding to Ms. Livak, Ms. Hamner asserted that the phrase Aon a regular basis@ applies to treating symptoms of a mental, physical, emotional, or behavioral disorder or to assist individuals in gaining self-control.

Upon questioning Ms. Sylva about the application of this law to the care of Ms. Livak=s mother, Ms. Sylva stated that staff of the Health Division will assist her with her concerns.

She also said that in her opinion, Ms. Hamner=s interpretation of the law is correct in regard to persons with Alzheimer=s being exempt from this law.

Janice A. Wright

Janice A. Wright, Administrator, DHCFP, DHR, reported that she has provided written responses to the questions proposed to her by the committee in relation to her division=s implementation of A.B. 280. (See Exhibit A, Tab VIII for details.)

UPDATE CONCERNING DEVEREUX CLEO WALLACE CENTERS AND RELATED ACTIONS CONCERNING THE MOAPA BAND OF PAIUTES; DISCUSSION OF THE PHYSICAL RESTRAINT PRACTICES IN THESE FACILITIES; AND DISCUSSION OF CASE NO. 97 D 2517, *UNITED STATES OF AMERICA EX REL. ROSS WRIGHT V. CLEO WALLACE CENTERS, CLEO WALLACE FOUNDATION, AND JAMES M. COLE, IN HIS OFFICIAL CAPACITY AS CHIEF EXECUTIVE OFFICER AND PRESIDENT OF CLEO WALLACE CENTERS*

Janice A. Wright

Janice A. Wright, Administrator, DHCFP, addressed two questions specifically posed to her in regard to reimbursement for higher levels of care at the Cleo Wallace Centers. The first question pertained to the method of reimbursement and whether there would be any reimbursement issues due to a facility billing Medicaid for a higher level of care. Ms. Wright noted that, currently, Nevada reimburses at $283 per day, and this level of reimbursement for residential treatment centers (RTCs) has been in effect since 1992. The Cleo Wallace Centers have not billed Nevada a higher rate than what is paid to RTCs in general, and billing by each facility is monitored on a regular basis. Further, Ms. Wright stated her opinion that the division=s current methods of site review are adequate to protect the health and safety of children and are adequate to protect the state from any fraudulent billing by RTC providers.

Continuing, Ms. Wright noted that the current Medicaid schedule for reimbursement of RTCs will not be altered. She concluded that DCFS has indicated that it will increase the frequency of visits to certain facilities.

Stephen A. Shaw

Stephen A. Shaw, Administrator, DCFS, reported that DCFS visits its program facilities every six months and that Mr. Michael Montgomery, Executive Director, Devereux Cleo Wallace, Denver, Colorado, has been notified by DCFS of the following information and procedural changes necessary for its continued participation as a provider for the remainder of 2000 (Exhibit K):

$ Six-month onsite reviews will be increased to quarterly reviews.

$ Center-wide statistics on the frequency of physical management of all Nevada children in placement will be prepared.

$ Individual incident reports for any physical management for all DCFS children in placement at the facility must be submitted to the division for review and comment.

$ The most recent and all subsequent licensing reviews by Colorado=s social services department, which is the licensing authority for the Cleo Wallace Centers, must be submitted to the division for review and comment.

$ Any interim JCAHO reviews, feedback reviews, any accreditation contingencies and/or remediation plans and provider responses as a result of these reviews must be submitted to the division for analysis and comment.

Mr. Shaw reported that DCFS has partnered with Devereux Cleo Wallace Centers since 1991, and they are able to provide services that DCFS cannot. Hence, he asserted that Cleo Wallace Centers has been an Aexcellent@ partner in terms of not raising its rates for the last nine years. In conclusion, he stated that the proposed changes made by DCFS will help produce and expedite child safety practices for all children within DCFS facilities.

Ross M. Wright

Ross M. Wright, former Administrator of the Cleo Wallace Center=s Colorado Springs campus in Denver, Colorado, testified that he would discuss his concerns with Cleo Wallace=s Aillegal@ use of swing-beds and the possible financial implications for the State of Nevada. He also referenced one of the articles presented that discusses Medicaid fraud charges and how these charges Asurprised@ Colorado County officials that had placed children in Cleo Wallace facilities (Exhibit A, Tab VIII, page VIII-5).

Mr. Wright asserted that various entities in the State of Colorado are investigating fraud against Cleo Wallace Centers. He stated that in his opinion, due to the complex nature of the cases and the nature of the fraud, agency personnel in the State of Nevada should fully investigate this provider and the state should follow the developments in Colorado. Continuing, Mr. Wright noted that he has supplied the committee with a copy of a summary of issues that describe certain violations and includes key questions for review of members of the committee. These documents are:

$ ACleo Wallace Center - Medicaid Fraud Key Facts@ (Exhibit L, Number 1), which is his summary of the key facts surrounding the Colorado Attorney General=s 1,200-page report of its investigation of the Cleo Wallace Center=s Aswing-bed scam@;

$ ACleo Wallace Center - Summary of Violations@ (Exhibit L, Number 2), provides the information about certain laws and regulations that he alleges were violated during the Aillegal swing-bed operation@; and

$ ACleo Wallace Center Key Questions@ (Exhibit L, Number 3), which he opines include key questions that were prepared to clarify issues regarding Nevada=s lawful right to a refund for what Mr. Wright estimates to be $2.1 million that may have been paid to Cleo Wallace Centers in the form of Afraudulent@ Medicaid claims.

Assemblywoman Berman asked Mr. Wright to define Aswing-bed.@ Mr. Wright explained that Aswing-bed@ is a phrase used in hospitals to describe a bed that is transferred between different units, depending on the needs of the facility. He provided an example of rural acute care hospitals that may not have the capacity to have separate units for the purpose of birthing babies versus critical care. Rural hospitals may receive special permission from their licensing agent to Aswing@ a bed between different patient needs in the facility.

Further, Mr. Wright noted that the Cleo Wallace Centers alleged that it had permission to operate under dual licensure. He asserted that the investigation revealed that no dual licensure was granted nor special permission given to the facilities for utilization of swing-beds.

Senator Mathews questioned Mr. Wright about his employment with the Cleo Wallace Centers. In response, Mr. Wright stated that he is a former employee of Cleo Wallace and worked for the facility for nine years, prior to becoming employed at his current job. He left employment with Cleo Wallace in September 1997. Senator Mathews then questioned Mr. Wright about how he arrived to testify to the committee in regard to this issue. He responded that he was there by request of the Chairman.

The Chairman commented to Senator Mathews that there had been prior testimony from the Cleo Wallace Centers in regard to this issue during the last committee meeting.

In response to a question by Chairman Koivisto, Mr. Wright stated that AIV-E@ funding is money that is available to individual states wherein each state receives money from the Federal Government for different uses. For example, in the State of Colorado IV-E funds are available for the treatment of children. In addition, IV-E funds must be used by organizations that are IV-E certified.

Continuing, Mr. Wright alleged that the Cleo Wallace Centers placed children into locked, inpatient units that were not IV-E certified. In his opinion, placing children in non-certified IV-E facilities and using federal funds in that facility may result in the loss of IV-E funding.

Ms. Janice Wright (previously identified) responded that Medicaid does not use IV-E funding. Her program uses State General Funds for 50 percent of its expenditures and Title XIX funds for the other 50 percent. This type of funding is used for all Medicaid eligibles who receive services within the state.

Mr. Shaw also reported that DCFS does not use IV-E funding for children placed in Cleo Wallace Centers. The

DCFS receives and uses federal IV-E funding only for children in its child welfare system.

Mr. Wright acknowledged that Cleo Wallace currently denies that it ever used swing-beds or that it ever claimed to have dual licensure. Mr. Wright asserted that he has supplied documentation to members of the committee that proves their claims as false. He indicated that internal cost management reports, which chartered the profitability of the Ascam@ and discussed alternative ways to report revenue, currently exist, and they justify his claims.

Chairman Koivisto asked Mr. Wright about over-billed services by the Cleo Wallace Center. Mr. Wright then described what he saw as a three tiered admittance and billing system that was used by Cleo Wallace to defraud state and local governments that placed children in Cleo Wallace facilities.

Ms. Wright reiterated and clarified that since 1992, Nevada=s rate for residential treatment has been $283 per day and its rate for acute psychiatric units is $600 per day. These rates have not changed since 1992. Therefore, reimbursement rates for psychiatric acute and residential treatment care facilities are licensed Aone in the same.@

Mr. Wright interjected that David Dechant, Lead Investigator, Colorado Department of Medicaid Fraud, Criminal Enforcement Unit, has not had any contact with representatives of the State of Nevada except for LCB staff, who requested a copy of his office=s report. Mr. Wright stated that he is not an expert regarding Medicaid fraud but only a witness as to how this fraud occurred. He stated that he can offer information on what he knows, however Mr. Dechant is the expert concerning fraud. Mr. Wright also commented that Mr. Dechant has spent approximately two years investigating this case and, in addition to the lengthy report, has a 49-page summary of his findings.

Senator Mathews expressed that she was concerned this issue might not be appropriate for the committee to spend time discussing because of the accusatory nature of the testimony and the prevalence of allegations that are discussed.

The Chairman agreed with Senator Mathews and pointed out that the Senator has some valid points. Reiterating previous testimony made by Mr. Wright, she suggested that LCB staff call Mr. Dechant and get more information. However, she noted that the information requested will have to pertain to Nevada children.

Senator Mathews stated that her goal is to make sure that Nevada children are safe and that they are not being mistreated while this investigation is taking place. In addition, if no reassurance of this could be furnished, then she questioned if the children within the Colorado facilities should be relocated.

In response to the concerns of Senator Mathews, Chairman Koivisto reported that the testimony heard by the committee at the last meeting indicated that the children were safe, well cared for, and were being monitored by the DCFS. She again suggested that the committee=s staff contact Colorado representatives so that the committee will know what bearing this case has on Nevada.

Michael Montgomery

Michael Montgomery, Executive Director, Devereux Cleo Wallace, Denver, Colorado, reiterated that this case was investigated for two years. He stated that after a two-year period, in any kind of a Awhistleblower lawsuit,@ the U.S. Attorney General=s Office has an opportunity to join the complainant. In May of 1999, the U.S. Attorney filed an Order of Declination in federal court declining to join Mr. Wright in his lawsuit.

Senator Washington asked Mr. Montgomery whether HCFA has filed any charges against the Devereux Cleo Wallace Centers. Mr. Montgomery responded that HCFA has not filed any actions against his facility; however, Cleo Wallace has been investigated by other agencies, numerous times, due to the current allegations.

REPORT CONCERNING DEVELOPMENT OF THE PROGRAM OF SUBSIDIES FOR THE PROVISION OF PHARMACEUTICAL SERVICES TO SENIOR CITIZENS PURSUANT TO NRS 439.635 TO 439.690, INCLUSIVE

Chairman Koivisto noted that the agenda item concerning a report describing the program to offer subsidies to senior citizens for pharmaceutical services did not have a presenter, and no one was signed up to offer public testimony. Consequently, the committee proceeded to the next agenda item.

REPORT CONCERNING PROPOSED MEDICAID REGULATIONS AFFECTING CERTAIN PERSONS WHO ARE DISABLED, AS SUCH REGULATIONS WERE CONSIDERED BY THE DHCFP, AT THE REGULATORY HEARING OF DECEMBER 20, 1999

Janice A. Wright

Janice A. Wright, Administrator, DHCFP, noted that at the conclusion of the 1999 Legislative Session, she recognized that her division needed to do more in terms of working and communicating with patients who are receiving Medicaid personal care attendant services from the program (Exhibit A, Tab XI). Therefore, she established regularly scheduled public hearings to educate new staff members and the disabled community on issues pertaining to clarification of important services and clarification of issues that will help disabled people live outside of an institution.

Further, she asserted that she became aware that division staff needed to work specifically with certain disability advocacy groups. Therefore, meetings were held in the Northern Nevada and Southern Nevada Centers for Independent Living to receive input with regard to their concerns.

As a result, DHCFP has compiled two items of significant priority:

$ The personal care assistant (PCA) regulations; and

$ The disability waiver.

Continuing, Ms. Wright noted that during the 1999 Legislative Session there was discussion in regard to expanding the physically disabled waiver that is administered by Medicaid. She discussed the financial concerns that are relevant when considering waiver expansion. She then indicated that the DHCFP currently serves 125 individuals on this waiver, and the waiting list consists of approximately 160 people.

Ms. Wright noted that the DHCFP currently has individuals who receive PCA services and who are not served by the waiver program because they receive these services under the general Medicaid State Plan service. She identified the three services that are presently offered by the division=s waiver program that serve the physically disabled, which are:

$ Case management;

$ Homemaker; and

$ Personal emergency response.

Ms. Wright stated that under the Medicaid State Plan, the division provides services such as transportation and specialized durable medical equipment. Hence, some of these services are State Plan services and some are waiver services. If clients qualify for the waiver, they also qualify for regular Medicaid State Plan services. She summarized that a client may be able to get PCA services as a general Medicaid client or as a waiver client, and if clients are eligible for waiver services, they will receive the three existing services plus all Medicaid State Plan services.

Discussing the public hearings that were held concerning the proposed regulatory changes, Ms. Wright noted that it appears that it is the opinion of representatives of the disabled community that the proposed changes to regulations that govern services for disabled persons are limiting. She also indicated that some items that have been requested by representatives of the disabled community might be achieved without having to go through the budget process; however, some items will have fiscal impacts that must be considered in the budget process.

Responding to Chairman Koivisto, Ms. Wright explained that any changes to Medicaid services must comply with both state and federal requirements.

The Chairman asked Ms. Wright whether the division needs formal approval from HCFA when requesting changes. Ms. Wright replied affirmatively and stated that HCFA requires the division to have a State Plan. If changes are

made in the State Plan, HCFA has requirements that the division must meet in applying the services. In addition, the state has certain requirements that must be met.

Further, Ms. Wright noted that the DHCFP would Alike to fully comply@ with the spirit and intent of Chapter 233B, the ANevada Administrative Procedure Act.@ Therefore, her considerations when public hearings are held is to ensure the following:

$ All public hearing notices are properly posted;

$ Individuals who have expressed an interest in and who will be impacted by the regulatory changes receive advance copies of the agenda;

$ Written notification of any public hearings is sent to the approximately 250 people who are maintained on the mailing list; and

$ That all public hearings held are accessible both in Northern and Southern Nevada and that they are videoconferenced upon request.

Ms. Wright responded to Chairman Koivisto that all State Plan changes are drafted by her office unless HCFA mandates the language, and in that case they will assign her office parameters by which to abide.

Ms. Wright responded to Senator Washington=s query on the status of the amended physically disabled waiver by stating that DHCFP has submitted a draft to the Director=s Office, DHR. In response to other questions by Senator Washington, Ms. Wright indicated that she has not seen the specific recommendations that were made by Mr. Rick Cline (Exhibit L), a citizen and user of PCA services. She noted that Mr. Cline has attended the division=s public hearings, and he has attended meetings that were held at the Northern Nevada Center for Independent Living (NNCIL), Sparks, Nevada.

Chairman Koivisto asked Ms. Wright to provide the committee with a copy of the processes required to amend the Medicaid State Plan, including the provisions that are required by HCFA.

Responding to questions by Assemblywoman Koivisto, Ms. Wright stated:

$ She does not recall ever having had an appeal process for a change adopted by the DHCFP. If an appeal of this nature had occurred, she would address the issue and add it to the agenda for review during the next public hearing.

$ The Senior Pharmaceutical Program is currently being researched and proposed methods for delivery of the program are being prepared for the Governor=s review. When the Governor has approved a final program structure, it is her intent to forward the information to the committee for review.

DISCUSSION OF THE COORDINATION OF PERSONAL CARE ASSISTANT (PCA) SERVICES IN NEVADA AND A REPORT CONCERNING THE STATUS OF THE MEDICAID WAIVER TO ENHANCE SERVICES FOR CERTAIN PERSONS WHO ARE PHYSICALLY DISABLED

Janice A. Wright

Janice A. Wright, Administrator, DHCFP, stated that representatives of the DHCFP have discussed the differences in PCA programs between the DHR and between Nevada=s Department of Employment, Training and Rehabilitation (DETR). She specified that some of the differences are:

$ Contracting for PCA services by agencies;

$ Reimbursement rates;

$ Required services;

$ Transportation reimbursement;

$ Provider training; and

$ Background checks.

In addition to these differences, Ms. Wright asserted that there are differences in the specific services required of PCAs by these different agencies. It is her opinion that these differences pertain to specific goals that one division or department may have versus another.

Ms. Wright stated that the division has held two meetings with the Aging Services Division, DHR, and DETR where these issues have been discussed. She asserted that the following agenda items will be discussed at future meetings:

$ Consistent reimbursement for PCA and PCA for the disabled (PCA-D) services among all state agencies;

$ Changes that might be made to help coordinate personal care services between agencies; and

$ A standard assessment tool such as a functional assessment of a client to determine his eligibility for PCA and PCA-D services.

Ms. Wright noted that during the1999 Legislative Session, the division found that the current rate for reimbursement of a PCA in the Nevada Medicaid Program was $9.48 per hour, and in the other state agencies that offer PCA services, the reimbursement rate was $13 per hour or more. At that time, the Legislature approved a rate increase for Medicaid reimbursement of PCAs to $14.50, which is effective July 1, 2000.

Rick Cline

Rick Cline, referenced earlier, addressed the committee and inquired on the status of regulation changes. He also referred to concerns that he has expressed in a document that he provided to members of the committee (Exhibit M).

Discussion ensued regarding Mr. Cline=s concerns over the lack of back-up services or on-call aides and their schedules. Ms. Wright noted:

$ Medicaid provides a limited number of hours of PCA services per day for clients. The DHCFP does not have authority to pay for back-up services because back-up services are State Plan services that are not reimbursed by Medicaid.

$ Many of the problems Mr. Cline discusses will be alleviated July 1, 2000, when the Aagency provider model@ conversion transpires.

PRESENTATION AND DISCUSSION OF THE IMPLICATIONS AND IMPLEMENTATION OF *OLMSTEAD V. L.C. EX REL. ZIMRING*, 119 S.CT. 2176 (1999)

Leslie Hamner

Leslie Hamner, Senior Deputy Legislative Counsel, Legal Division, LCB, provided committee members with background information concerning the status of *Olmstead v. L.C. ex rel. Zimring*, 119 S. Ct. 2176 (1999). (See Exhibit N.)

Ms. Hamner began her presentation by stating that the provision of Title II of the Americans with Disabilities Act (ADA) specifically at issue in *Olmstead* prohibits a public entity from discriminating against a disabled person based on his or her disability. In enacting the ADA, Congress instructed the Attorney General to issue regulations implementing this provision. Therefore, enactment of two regulatory provisions relevant to the Supreme Court=s decision in *Olmstead* originated.

Ms. Hamner noted that the first stipulation provided that a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The second stipulation provided that a public entity shall make reasonable modifications in policies, practices, or procedures,

when modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making modifications would fundamentally alter the nature of the service, program, or activity.

Ms. Hamner summarized that the U.S. Supreme Court analysis of these provisions examined whether undue institutionalization constitutes discrimination by reason of disability. She stated that the court noted that in enacting the ADA, Congress had a comprehensive view of the concept of discrimination. In addition, the court recognized that institutionalization of persons who can manage and benefit from community settings perpetuated unwarranted assumptions that isolated persons are incapable or unworthy of participating in community life. She further asserted that the court realized that confinement in an institution severely diminishes a person=s everyday life activities.

Ms. Hamner stated that the court addressed the issue of a state=s defense to a claim of discrimination such as that brought by L.C. and E.W. in *Olmstead*. She summarized that the court found that a state is required to provide community-based treatment for persons with mental disabilities only when placement can be reasonably accommodated by that state. A court determining whether a placement can be reasonably accommodated by a state must consider, in view of the resources available to the state, not only the cost of providing community-based care to the individual, but also the range of services the state provides to others with mental disabilities and the obligation of the state to mete out those services equitably.

Ms. Hamner noted that HCFA has provided each State Medicaid Director with recommendations for developing effectively working comprehensive plans. A copy of these recommendations may be found in Exhibit A (Volume 2, Tab XII, pages 6 through 9). She also indicated that *Olmstead* deals with individuals with mental disabilities; however, this case is based on the ADA and applies to all persons with disabilities who are protected from discrimination by Title II of the ADA. Thus, if a similar case was brought against the State of Nevada, the court would apply the same test to determine if the state was in violation of Title II of the ADA. This determination would depend on various factual issues including the resources available to the state, the distribution of those resources, the services provided to persons with disabilities, and whether those services were provided in a timely manner.

Responding to questions by Senator Washington, Ms. Hamner responded:

$ One of the persons who filed this lawsuit was first placed in a hospital psychiatric unit in the State of Georgia;

$ After being diagnosed, her doctor deemed her competent enough to be placed within the community;

$ She then filed suit against the State of Georgia because she remained in a hospital even after her physician released her to a community-based program;

$ The State of Georgia was receiving money from the Federal Government for the purpose of placing her in a community-based program and had not done so, which was determined to be a violation of Title II of the ADA; and

$ The State of Georgia had a facility available for her but claimed that it had insufficient funds for the placement.

The Chairman asked that Ms. Hamner supply the committee with an idea of some possible implications for Nevada and its disabled community.

Ms. Hamner responded that a state should initiate a plan based on the recommendations set forth by HCFA and create a comprehensive effective plan in order to ensure that disabled people are receiving services based on the most appropriate integrated community-based setting and the needs of those individuals.

Carlos Brandenburg

Carlos Brandenburg, Ph.D., Administrator, DMHDS, commented that since 1995, the division has had a strategic plan in place for community-based services. The state=s vision has been to provide services in the community. In addition, the 1997 Legislature, with the support of former Governor Robert Miller, granted $25 million to the division to provide community-based services. In 1999, with the support from Governor Guinn and the Legislature, the division received $19 million. Therefore, the state has been well positioned in addressing the *Olmstead* issue.

Continuing, Dr. Brandenburg commented about the Adevelopmental@ side of this issue. He stated that during the 1999 Legislative Session, the division received a total of $24 million that will be used to address the waiting list for

other services provided by the division, including the enhancement of some new services. This money was used to help eliminate the waiting list for developmental services that are offered by the division. He asserted that both the Governor and the Legislature have been extremely supportive in assisting the division in its goal to provide services to the disabled community in the least restrictive environment.

Concluding his remarks, Dr. Brandenburg reported that the DMHDS will continue to provide services for persons who are developmentally disabled, and the division will remain focused on expanding and promoting home and community-based services.

Charlotte Crawford

Charlotte Crawford, Director, DHR, reported that, prior to 1995, the department primarily developed its community-based services, and it has been a Alean@ developer of institutional services. She stated that the history against which the *Olmstead* decision was derived was based upon states that have a much Aricher institutional history@ than Nevada=s. It is her opinion that a key to decision making in this area is that most states do not having boundless responsibilities or resources that must be used for support services for persons who have disabilities.

Ms. Crawford stated that expanding the physically disabled waiver is one method by which the department is complying with the *Olmstead* decision.

Further, Ms. Crawford expressed her opinion that federal appropriations and policies should be more forthcoming to allow individuals to live in community settings. She further stated that Nevada has an obligation to keep a balanced system, provide a continuum of services, and continue to place emphasis on community services as well as intensive treatment services.

The Chairman suggested that the committee submit a letter to Donna Shalala, Secretary, DHHS, and to the state=s Congressional representatives encouraging them to focus their attention on these critical funding and programmatic issues.

Senator Washington asked Ms. Crawford whether there was a cap that limits the state=s liability in cases such as *Olmstead* to $50,000.

Nancy Angres, Chief Deputy Attorney General for the Human Resources Division of the Attorney General=s Office, responding on behalf of Ms. Crawford, stated that damages in civil rights lawsuits or ADA lawsuits are not capped by state law.

There was additional discussion about efforts by the U.S. Congress to Ablock grant@ certain services to states.

Ms. Crawford concluded her discussion by reminding the committee that the Federal Government does have the potential to make broad changes when it has been encouraged to do so. She used the example of waivers to establish mandatory Medicaid managed care programs. In 1997, Congress realized that states should be given flexibility to operate managed care programs, and they were no longer required to adhere to stringent waiver requirements. Ms. Crawford stated that as the waiver philosophy shifts, Medicaid requirements may be more flexible. However, she reminded members that relief of such responsibilities places the Federal Government at risk to share the costs of enhanced services.

Jack Mayes

Jack Mayes, Executive Director, Nevada Disability Advocacy and Law Center and Board Member for the NNCIL, addressed the committee on behalf of Mary Jean Thomsen, who is with the NNCIL, regarding individuals with physical disabilities. (See her written remarks at Exhibit O.)

Mr. Mayes stated that the *Olmstead* decision was a landmark for all individuals with disabilities because the decision was based on the ADA=s premise that Aunnecessary segregation and institutionalization constitute discrimination and violates the >integration mandate.@

Further, Mr. Mayes concurred with the earlier remarks of Ms. Hamner. He stated that when an individual with a disability is qualified to receive services in the community rather than in an institution, and the state refuses to provide those community services to that individual, the state is violating the ADA.

Mr. Mayes also indicated that, currently, if a person with physical disabilities has an income of $500 to $1,500 per month, that individual is not eligible for Medicaid services. He asserted that this problem results in a person who is physically disabled having only two options:

$ Acceptance and placement into the physically disabled waiver program, which has a waiting list of over 150 individuals, and a waiting period ranging from 18 months to 2 years; or

$ Institutionalization in a long-term care facility.

He summarized that the state=s Medicaid eligibility standards essentially Aforce@ disabled individuals into institutions. The services they need are not available, and they are not maintained in the least restrictive environment. He asserted that the state consequently has refused to adhere to the provisions of the ADA, and the state is unnecessarily segregating and institutionalizing physically disabled individuals which does constitute discrimination under the ADA.

Continuing, Mr. Mayes requested, for Ms. Thomsen, that the Legislature bring the state into compliance with the ADA and the *Olmstead* decision to eliminate discrimination against the physically disabled.

Mr. Mayes reiterated that the *Olmstead* decision mandated that states prepare a Acomprehensive, effectively working plan for the placement of qualified mentally disabled people into a less restrictive setting@. Since the *Olmstead* decision was based on the ADA, which was created to protect individuals with Aall disabilities,@ the Medicaid State Plan needs to include, not exclude, individuals with physical disabilities.

Jon Sasser

Jon Sasser, speaking on behalf of the Nevada, Washoe, and Clark County legal services agencies, directed the committee=s attention to Exhibit A (Volume 2, Tab XII, page XII-7), which discusses HCFA=s interpretation of *Olmstead*. In particular, HCFA notes that this case is not limited to persons with mental disabilities, but it applies to all individuals with disabilities who are protected from discrimination by Title II of the ADA. Based on the letter, he stated that the case is not limited only to Medicaid programs nor only to individuals in institutional settings. It includes individuals who are being Aassessed for possible institutionalization.@

He indicated that the letter continued by recommending that each state obtain a comprehensive plan for a series of community-based services. He asserted that if litigation is brought against the state, it would then have the defense in court and could report that it has a comprehensive plan in place and is moving forward on that plan.

Continuing, Mr. Sasser stated that Ms. Crawford testified that the state currently has a waiver in place, but he asserted that she did not say that the state currently has a comprehensive plan for the purpose of addressing individuals outside of the areas of mental health and mental retardation. He said that the state could use a comprehensive plan in defense of any type of lawsuit.

Mr. Mayes then commented that use of the waiver for the purpose of legal defense is a problem, as referenced in Exhibit A (Volume 2, Tab X, page X-5). The prevailing problem noted in the waiver statistic report involves a large waiting list. This waiting list, as of December 17, 1999, includes approximately 187 people. It is his opinion that the state is Atreading water@ and no progress is being made in this area. Mr. Mayes stated that it takes an individual approximately two years to get to the Afront@ of the waiting list. He stated that the process of moving up the waiting list is usually the result of the death of someone else, and he opined that a court of law would most probably deem this style of problem solving as inadmissible and would likely find against the state in this situation.

Concluding his remarks, Mr. Mayes stated that it was his opinion the state is vulnerable to a lawsuit. He recommended the creation of a comprehensive plan for community-based services for people with disabilities, and he recommended that the state agencies adhere to such a plan once it is developed.

In response to Assemblywoman Freeman, Mr. Sasser commented that if a disabled individual=s income exceeds $500 per month, and he is not eligible for Social Security Income, he may receive services, but only if he is placed in an institution. He stated that this criteria might be changed by obtaining approval from the Federal Government in the form of a Medicaid waiver.

Ms. Crawford commented that the waiver process is for access to the Medicaid program. This process is required in order to gain Federal Financial Participation (FFP), which is the Federal Government=s financial contribution to states in the Medicaid program, for community-based services.

The alternative is to develop community-based programs that would be entirely state funded. Therefore, the waiver process is critical, particularly for institutional services such as long-term care. This process is pursued by the state because it allows the state to obtain FFP rather than building those programs only from the State General Fund.

PRESENTATION AND DISCUSSION CONCERNING SERVICES FOR CHILDREN WITH AUTISM IN NEVADA

Florence LaRoy

Florence LaRoy, Training Services Director for Nevada Parents Empowering Parents (a statewide parent training and information center), tutor, advocate, and parent of a 15-year-old son, addressed the committee concerning services for children with autism in Nevada.

Ms. LaRoy stated that she has been seeking services in Nevada for her son for over 10 years, as well as advocating for families. She provided a ten page report (Exhibit P), and she noted that there are a:

$ Lack of service providers who are knowledgeable and experienced in using the best practices for treating children with autism;

$ Lack of services that specifically serve individuals with autism in the state; and

$ Lack of resources for providing families with quality, coordinated, and affordable programs.

In addition, Ms. LaRoy directed the committee=s attention to articles that may be referenced in Exhibit P.

Jan Crandy

Jan Crandy, Founder, Families for Effective Autism Treatment (FEAT), told the committee that she is the mother of a child with autism and considers her family extremely fortunate to have been able to afford and receive treatment for her daughter. She described FEAT as being a non-profit organization that is made up of parents and professionals giving families Ahope@ for the future while dealing with autism (Exhibit R).

Ms. Crandy noted:

$ Autism currently affects over 400,000 individuals in the U.S. and one in every 500 children born today.

$ It is the third most common developmental disorder, more prevalent than Downs Syndrome, childhood cancer, or cystic fibrosis, with an annual cost to the nation of over $13 billion.

$ It receives less than 15 percent of the funding of other less common diseases.

$ For over 40 years, autism was thought to be an emotional disorder that was caused by trauma or bad parenting, resulting in the loss of an entire generation of children to institutions.

$ Current research supports that if children are given early intervention at 30 to 40 hours per week, then 47 percent of them will no longer need to remain in special education classes.

$ Long term studies have proven those students remained independent into adulthood.

Ms. Crandy recommended that the state provide funding directly to families to assist their children. She stated that Arizona uses Title XIX money to fund home autism programs at $8 per hour for up to 40 hours per week. She referred to various counties in California that have approved and provided up to 30 hours per week, and the State of Michigan offers 27.5 hours, 230 days a year of one-to-one instruction.

Florence LaRoy

Florence LaRoy read the testimony of Shannan Michalsky, who was unable to attend the meeting. (See her testimony at Exhibit P). Ms. LaRoy reiterated the following recommendations of Ms. Michalsky:

$ Restructure state services for all children with brain disorders.

$ Provide immediate acute psychiatric care for children with low intelligence quotients (IQs) who need such care without requiring them to wait for a bed or be placed on a waiting list.

$ Provide long-term residential care facilities that address all brain disorders and that help transition a person back into his home.

$ Provide more appropriate services for people who have autism and who have high IQs.

In conclusion, Ms. Michalsky stated that the state must assist children with brain disorders because they cannot speak for themselves. She reminded members of the committee of the importance of providing care within the state rather than relying on out-of-state institutions for Nevada residents.

Mary Sullivan Bryan

Mary Sullivan Bryan, R.N., addressed the committee in regard to her daughter, Kelsey, who also has autism. She explained the steps she and her husband took to find treatment for their daughter.

Ms. Sullivan Bryan stated that autism affects 1 out of 500 children and, although it is a medical diagnosis, she asserted that the only effective treatment is an educational one. She expressed her dismay that this treatment is not available in Nevada or it is available only to those children whose families have the financial resources to provide for this very intensive treatment.

Carlos Brandenburg

Carlos Brandenburg, Ph.D., Administrator, DMHDS, discussed the issue of autism. He reported that the 1999 Legislature expanded the definition of mental retardation to include those individuals with a Arelated condition@ such as autism. He noted that, when speaking of a related condition, this addresses individuals who have impaired adaptive behavior who need services similar to those provided for persons with mental retardation. He indicated that the division=s developmental program provides services for both children and adults. He also stated that the DCFS provides services for children and adolescents in the area of mental health.

David Luke

David Luke, Ph.D., Associate Administrator, DMHDS, commented on Dr. Brandenburg=s previous statements. He stated that the division is currently serving 111 individuals with autism C half of whom are children (Exhibit Q, Question 1). He indicated that the related condition service mandate has allowed the division to expand coverage to more individuals with autism. Dr. Luke indicated that about 10 percent of DMHDS clientele are children with autism. He also stated that funding that was appropriated by the 1999 Legislature included programs and services for adults as well.

Concluding his remarks, Dr. Luke commented that the division=s funding is primarily used for services similar to what individuals would need if they were mentally retarded. The focus of the division=s funding involves supporting families, providing families with in-home training money, supportive living programs for adults, and foster placement (Exhibit Q, Question 3). These services are also available and provided to individuals with autism.

Responding to Senator Washington, Ms. Crandy reported that the cost for autism services is $30,000 per month at $10 per hour for those sessions. Dr. Luke commented that the Psychology Department at the University of Nevada, Reno (UNR), currently operates the ALovass Program@ and, on occasion, has been funded by individual family members that had sufficient resources. The program is available but with questionable funding.

Responding to Chairman Koivisto, Ms. Crandy said that in 1998 there were 238 children labeled as having autism in Nevada. However, most children are not being classified as having autism until the age of six when they enter

school.

Responding to Senator Washington, Ms. Crandy said that pediatricians are not well educated on the identification of autism. The majority of people do not recognize symptoms of autism in young children, and it is her opinion that the public must be educated about the symptoms of autism so that earlier intervention might occur with those who have autism. Ms. Crandy stated that if autistic children are diagnosed earlier and receive earlier intervention, their long-term institutional costs would be reduced in addition to producing a reduced cost for special education needs.

Senator Washington suggested that Ms. Crandy meet with Dr. Brandenburg and Dr. Luke to develop solutions to the problem and format a comprehensive plan. He then asked her to return with a finalized comprehensive plan and submit her proposal for consideration to the committee.

Ms. LaRoy testified that she has submitted a packet for review (Exhibit P), which gives a brief description of the UNR program. She has included information from the Autism Society of America. She reminded the committee of an earlier remark of Ms. Crandy, which is that the UNR program currently serves 12 children at a cost of $30,000 per child.

Ms. LaRoy stated that she also has an autistic child whose autism was overlooked by a physician at the Special Children=s Clinic, Bureau of Family Health Services, Health Division, DHR. She stated that initially her child was referred to a psychiatrist, and she subsequently went to the DCFS for assistance. At that point, her child received a diagnosis; many years of potential treatment were lost due to having received one referral after another until a final diagnosis was made. She concluded that it is her opinion that not enough knowledgeable personnel have the expertise to properly treat children with autism.

REPORT CONCERNING ASSEMBLY BILL 386 (CHAPTER 516, *STATUTES OF NEVADA 1999*) REQUIRING THE DHR TO CONDUCT A STUDY OF THE METHODOLOGY USED IN DETERMINING THE AMOUNT AND DISTRIBUTION OF PAYMENTS MADE TO CERTAIN HOSPITALS THAT TREAT MEDICAID, INDIGENT, OR OTHER LOW-INCOME PATIENTS

Janice A. Wright

Janice A. Wright, Administrator, DHCFP, gave testimony concerning A.B. 386 (Chapter 516, *Statutes of Nevada 1999*). She began her testimony by stating that the disproportionate share hospital study was a part of A.B. 386. As a result of this measure, the division established a committee to work on the task of determining factual and data issues concerning the study (Exhibit S).

Ms. Wright noted that the committee met on December 21, 1999. At that time, its members reviewed the goals of A.B. 386, created a subcommittee, and appointed members that will be responsible for developing factual data. Members of the subcommittee then developed a summary of necessary data elements, and they requested this information in writing from every hospital. The data request was confirmed by a meeting of the full committee on January 19, 2000.

Ms. Wright asserted that the goal of the committee will be to develop recommendations that must be provided, on or before July 1, 2000, to the Governor, the Interim Finance Committee, and the Legislative Committee on Health Care.

REVIEW OF WRITTEN REPORT CONCERNING ITEMS RELATING TO LONG-TERM CARE IN NEVADA TO BE STUDIED PURSUANT TO SENATE CONCURRENT RESOLUTION NO. 4 (FILE NO. 143, *STATUTES OF NEVADA 1999*)

Marla McDade Williams

Marla McDade Williams, Senior Research Analyst and Committee Policy Analyst, Research Division, LCB, directed the committee=s attention to a letter submitted by Senator Mike McGinness to Chairman Koivisto that describes the first two meetings that were held by the long-term care study committee (Exhibit A, Volume 2, Tab XV). This letter

concluded that the committee will study:

$ The feasibility of introducing more community-based options as an alternative to institutionalization;

$ The feasibility of maximizing home and community-based services in the Medicaid program;

$ Alternatives to institutionalization;

$ Long-term care insurance and its role in financing long-term care in the future; and

$ Various alternatives as to how Nevada currently finances long-term care expenditures in the Medicaid program, taking into consideration the physical capacity and limitations of Nevada=s rural counties.

DISCUSSION OF FUTURE TOPICS

Marla McDade Williams

Ms. McDade Williams addressed potential issues for the upcoming meetings of March 7, April 18, and June 6, 2000 (Exhibit T).

Ms. Williams noted that the presentation by Dr. Robert Miller, Dean of the UNR, School of Medicine, will be re-scheduled for the March 7, 2000, committee meeting.

PUBLIC TESTIMONY

Richard Crasky

Richard Crasky commented that nurses, by ethics, advocate for patients. He asserted that administration of rigid standards based simply on ratios is unethical. Mr. Crasky explained further that a measure of acuity is simply a snapshot in time of a particular patient or group of patients health care needs, and he commented that to make an acuity system truly accurate, a nurse or nursing staff would have to evaluate acuity on a moment-by-moment basis. Therefore, acuity systems can affect staffing to an extent where personnel would have to staff for a highly acute event and then staff down. In effect, this is an extremely cumbersome practice.

Mr. Crasky pointed out that he has not personally received, nor has he witnessed another manager having received, any kind of economic incentive for reducing staffing levels for their patients. He commented that this is a terrible and unethical means of practice and stated that, in his opinion, few nurse managers would commit to such forms of practice.

Continuing further, Mr. Crasky noted that nurses who describe themselves as professionals need to make a decision whether in fact they are Aprofessionals@ or Aworkers.@ He asserted that if they deem themselves as professionals, they need to partake in the scientific examination of accurate acuity measurement tools, in which few exist. The few that do exist, however, are highly expensive for organizations and their reliability is questionable.

Finally, he concluded that the driving issue of staffing hospitals is not based solely on acuity but includes the challenge of having to locate qualified RNs within the State of Nevada who can meet the high demand of increasing nurse staffing needs, patient needs, and ratio levels. Currently, the nurse staffing crisis is driven by the availability of nurses and not by an organization=s attempt to lower nurse staffing ratios.

Susan Weiler

Susan Weiler, R.N., Sunrise Hospital and Medical Center, Las Vegas, Nevada, commented in regard to issues that surround the quality of care (Exhibit U). Ms. Weiler noted that quality care issues are many and multifaceted and must be addressed but not by a Aquick-fix@ solution.

She indicated that the provisions of quality care are affected by the following:

$ Availability of nurses;

$ Quality of education;

$ Community resources and supports; and

$ Access to health care.

If the elected governing body decides to mandate nurse staffing ratios, their biggest challenge will encompass how to:

$ Apply the ratios to the nursing profession and their number of patients, which are not growing proportionately by population;

$ Use this to meet the community=s needs;

$ Change this to adhere to the advancements in medical care and technology; and

$ Keep it all cost effective and of significant quality.

Continuing, Ms. Weiler commented that, together, RNs, nurse teaching faculty, and legislators can discover staffing problems, develop a comprehensive plan, act on that plan, and formulate a solution that will meet the needs of both the medical community and the population at large.

Ms. Weiler concluded that a team effort is needed to solve current issues, recruit, educate, retain nurses, and to provide each community with an abundance of resources and education.

ADJOURNMENT

There being no further business to come before the committee, Chairman Koivisto adjourned the meeting at 4:55 p.m.

Exhibit V is the AAttendance Record@ for this meeting.

Respectfully submitted,

Paige Clyde
Senior Research Secretary

Marla McDade Williams
Senior Research Analyst

APPROVED BY:

_____
Assemblywoman Ellen M. Koivisto, Chairman

Date: _____

LIST OF EXHIBITS

Exhibit A consists of a two-volume packet that was prepared by staff for this meeting. This exhibit contains a copy of the AMeeting Notice and Agenda@ and information relating to the following agenda items:

1. Agenda Item IV C APresentation and Discussion of Nurse Staffing Levels in Nevada@;

2. Agenda Item V C AReport Concerning Amendments to Chapter 455A of the *Nevada Administrative Code* for

Fluoridation of Nevada=s Public Water Systems@;

3. Agenda Item VII C ADiscussion of the Use of Restraints and Interventions Pursuant to *Nevada Revised Statutes* (NRS) 433.545 to 433.551, inclusive; and the Use of Aversive Intervention or Forms of Restraint on Patients with Disabilities Pursuant to NRS 449.765 to 449.786, inclusive@;

4. Agenda Item VIII C AUpdate Concerning Devereux Cleo Wallace Centers and Related Actions Concerning the Moapa Band of Paiutes; Discussion of the Physical Restraint Practices in these Facilities; and Discussion of Case No. 97 D 2517, *United States of America ex rel. Ross Wright v. Cleo Wallace Centers, Cleo Wallace Foundation, and James M. Cole, in his official capacity as Chief Executive Officer and President of Cleo Wallace Centers*@;

5. Agenda Item IX C AReport Concerning Development of the Program of Subsidies for the Provision of Pharmaceutical Services to Senior Citizens Pursuant to NRS 439.635 to 439.690, inclusive@;

6. Agenda Item X C AReport Concerning Proposed Medicaid Regulations Affecting Certain Persons Who Are Disabled, as Such Regulations Were Considered by the DHCFP, at the Regulatory Hearing of December 20, 1999@;

7. Agenda Item XI C ADiscussion of the Coordination of Personal Care Assistant (PCA) Services in Nevada and a Report Concerning the Status of the Medicaid Waiver to Enhance Services for Certain Persons Who Are Physically Disabled@;

8. Agenda Item XII C APresentation and Discussion of the Implications and Implementation of *Olmstead v. L.C. ex rel. Zimring*, 119 S.Ct. 2176 (1999)@;

9. Agenda Item XIII C APresentation and Discussion Concerning Services for Children with Autism in Nevada@;

10. Agenda Item XIV C AReport Concerning Assembly Bill 386 (Chapter 516, *Statutes of Nevada 1999*) Requiring the DHR to Conduct a Study of the Methodology Used in Determining the Amount and Distribution of Payments Made to Certain Hospitals that Treat Medicaid, Indigent, or Other Low-income Patients@; and

11. Agenda Item XV C AReview of Written Report Concerning Items Relating to Long-term Care in Nevada to be Studied Pursuant to Senate Concurrent Resolution No. 4 (File No. 143, *Statutes of Nevada 1999*).@

Exhibit B is a packet of information provided by Theresa Morrow, which contains the following items:

1. ATestimony of Theresa Morrow presented to the Nevada Legislative Committee on Health Care, January 26, 2000, Subject: Nurse Staffing/Hospital Safety@;

2. A memorandum dated January 25, 2000, to Marla McDade Williams, Senior Research Analyst, State of Nevada Legislative Counsel Bureau, from Theresa Morrow R.N., Co-Chair, Health Care Oversight Committee, Nevada Service Employees Union (Service Employees International Union, Local 1107), titled AAcute Care Hospital Staffing@;

3. A memorandum dated January 25, 2000, to Marla McDade Williams, Senior Research Analyst, State of Nevada Legislative Counsel Bureau, from Theresa Morrow R.N., Co-Chair, Health Care Oversight Committee, Nevada Service Employees= Union (Service Employees International Union, Local 1107), titled AAcute Care Hospital Staffing Management Reports@; and

4. A book, titled *To Err Is HumanCBuilding a Safer Health System*, from the Institute of Medicine.

Exhibit C is a document titled *Nevada Hospital Association C Presentation on Nurse Staffing Levels in Nevada C Legislative Committee on Health Care C Wednesday, January 26, 2000*. Also included with this exhibit are the following items that replace the sections noted:

1 A transmittal letter dated February 8, 2000, to Assemblywoman Ellen Koivisto from Bill Welch, President of the Nevada Hospital Association (NHA), which includes a copy of updated information that was prepared by the NHA to replace pages 1 through 16 of the handout provided to the committee on

January 26; and

2 A transmittal letter dated February 17, 2000, to Assemblywoman Koivisto from Mr. Welch, which includes a copy of updated information that was prepared by the NHA to replace Section 10 of the exhibit, which is a table titled AActively Licensed or Certified.@

Exhibit D is a handout, titled ATestimony of Yolanda Crobarger presented to the Nevada Legislative Committee on Health Care, January 26, 2000,@ which addressed nurse staffing levels in Nevada.

Exhibit E is a document, titled APresentation Before the Legislative Committee on Health Care, January 26, 2000,@ which was presented by Bernard H. Feldman, M.D., M.P.H., Chairman of the State Board of Health and Professor and Chairman/Residency Director of the Department of Pediatrics at the University of Nevada School of Medicine in Las Vegas. This exhibit concerns nurse staffing levels.

Exhibit F consists of the following items:

1. A>Public Workshop Comments= Relating to Medical Facility Regulations and the Issue of Nurse Staffing Ratios@; and

2. AExcerpts from State Board of Health Minutes Relating to Medical Facility Regulations and the Issue of Nurse Staffing Ratios, February 12, 1999, Minutes.@

Exhibit G consists of the following items:

1. AState Board of Health Minutes C December 11, 1998@ (Reno, Nevada); and

2. AState Board of Health Minutes C September 10, 1999@ (Las Vegas, Nevada).

Exhibit H is a document, titled AVaricella Facts (Chickenpox),@ dated May of 1997 from the Centers for Disease Control and Prevention.

Exhibit I is a memorandum dated January 19, 2000, to Marla Mc Dade Williams, Senior Research Analyst, Research Division, from Yvonne Sylva, Administrator, Health Division, through Charlotte Crawford, Director, Department of Human Resources, regarding AYour letter dated January 4, 2000.@ This correspondence addresses DHR=s implementation of Assembly Bill 280 (Chapter 597, *Statutes of Nevada 1999*).

Exhibit J is a copy of the remarks presented by Susan Livak of Reno, Nevada, regarding the use of restraints and interventions pursuant to NRS 433.545 to 433.551, inclusive.

Exhibit K is a letter dated January 19, 2000, to Michael Montgomery, Executive Director, Devereux Cleo Wallace, Denver, Colorado, from Jerry W. Clark, LCSW, Clinical Program Planner, Division of Child and Family Services, DHR, regarding procedural changes for the Devereux Cleo Wallace Centers for calendar year 2000.

Exhibit L was provided by Ross M. Wright, a former Administrator of the Cleo Wallace Center=s Colorado Springs campus in Denver, Colorado. This exhibit consists of a letter dated January 23 , 2000, to Ms. Ellen M. Koivisto, Chairman of the Legislative Committee on Health Care, from Ross M. Wright and includes the following attachments:

1. ACleo Wallace Center - Medicaid Fraud C Key Facts@;

2. ACleo Wallace Center C Summary of Violations Pursuant to the >Swing-Bed= Scheme C 1995 - 1998@; and

3. ACleo Wallace Center C Key Questions.@

Exhibit M is the testimony of Rick Cline, a resident of northern Nevada, concerning personal care attendant programs.

Exhibit N is a handout, titled ASummary of Presentation Concerning *Olmstead v. L.C.*,@ which was discussed by Leslie Hamner, Senior Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau.

Exhibit O is a document, titled AOlmstead Act Testimony,@ which was prepared by Mary Jean Thomsen, Community Advocacy Coordinator, Northern Nevada Center for Independent Living. Mr. Jack Mayes, Executive Director of the Nevada Disability Advocacy and Law Center, presented this information to the committee on behalf of Ms. Thomsen.

Exhibit P is a copy of the testimony (with attachments) presented by Florence LaRoy concerning services for autistic children in Nevada.

Exhibit Q is a memorandum dated January 18, 2000, to Marla McDade Williams, Senior Research Analyst, Research Division, from Carlos Brandenburg, Ph.D., Administrator of the Division of Mental Health and Developmental Services (DMHDS); Debbie Hosselkus, Deputy Administrator, DMHDS; and David Luke, Ph.D., Associate Administrator, DMHDS, DHR, through Charlotte Crawford, Director of DHR, concerning autism.

Exhibit R is the testimony of Jan Crandy, a parent of an autistic child. This exhibit also includes a publication dated October 1997 and titled AReaching Out for our Children,@ which was produced by FEAT [Families for Effective Autism Treatment] of Southern Nevada.

Exhibit S is a list dated January 1, 2000, and titled ADSH [Disproportionate Share Hospital] Study Members.@

Exhibit T contains lists of potential issues for the March 7, April 18, and June 6, 2000, meetings of the Legislative Committee on Health Care. This exhibit also includes lists titled AAttachment A C Rural Health Issues@ and AAttachment B C Recommendations from the Alzheimer=s Association.@

Exhibit U is a copy of the remarks presented by Susan Weiler, R.N., of Las Vegas, Nevada, which addresses the needs of nursing specialists and solutions for the nurse/patient ratio issue.

Exhibit V is the AAttendance Record@ for this meeting.